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OFFICE OF THE
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March 6, 2002

VIA HAND DELIVERY

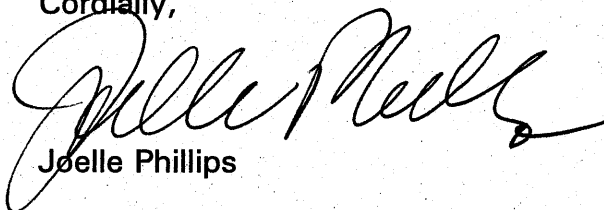
Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case
Proceeding to Declare Switching an Unrestricted Unbundled Network
Element*
Docket No. 02-00207

Dear Mr. Waddell:

Enclosed please find the original and thirteen copies of BellSouth's
Opposition to Motion to Set Pre-Hearing Conference on March 7, 2002. Copies
have been served on the parties of record.

Cordially,



Joelle Phillips

JP/jej

Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

**IN RE: *PETITION OF TENNESSEE UNE-P COALITION TO OPEN A
CONTESTED CASE PROCEEDING TO DECLARE SWITCHING AN
UNRESTRICTED UNBUNDLED NETWORK ELEMENT***

Docket No. 02-00207

**BELLSOUTH TELECOMMUNICATIONS, INC.'s
OPPOSITION TO MOTION TO SET
PRE-HEARING CONFERENCE ON MARCH 7, 2002**

On February 28, 2002, the CLECs calling themselves the UNE-P Coalition ("Petitioners") filed a motion requesting that the Hearing Officer set a Pre-Hearing Conference on the afternoon of March 7, 2002 "for the purpose of setting a procedural schedule in this matter, and if the Hearing Officer requests, to hear arguments on outstanding motions." The Motion asserts no rationale or need for holding a Pre-Hearing Conference or hearing oral argument as soon as Thursday of this week and should be denied.

The Petitioners were ordered to file their response to BellSouth's Motion on the same day that the Petitioners now propose for a Pre-Hearing Conference. In an attempt to address this anomaly, the Motion states that the Petitioners would be willing to file their response on Wednesday, March 6, 2002, one day earlier than directed by the Hearing Officer. BellSouth objects to this proposal, which would provide BellSouth with less than one business day to review the Petitioners' response and prepare for the Pre-Hearing Conference and any oral argument.

Moreover, for the reasons stated in BellSouth's Motion to Dismiss, the Petitioners' case should be dismissed because the relief sought is not within the power of the Authority to grant and the Petition has been brought under the wrong Tennessee statute in the first instance.¹ See Motion of BellSouth Telecommunications, Inc. to Dismiss Petition Pursuant to T.C.A. § 65-5-209(d) and to Strike Pre-Filed Testimony, filed March 4, 2002.

The Petitioners have conceded that no emergency exists. At the Directors' Conference on February 26, 2002, counsel for the Petitioners conceded in response to questioning by Director Kyle, as well as comments from BellSouth, that the sole basis on which an expedited schedule was sought was the application of Section 65-5-209(d). (Tr. at p. 12, lines 6-17). As stated in BellSouth's Motion to Dismiss, it would be an unfair result if the Petitioners were allowed to obtain an expedited schedule as a fall-back or compromise position upon showing that the statutory basis for the expedited schedule was inapplicable or unwarranted. Petitioners' tactic of relying on an inapplicable statute, filing at the last possible minute before the TRA's Agenda Conference, simultaneously filing testimony, and seeking an expedited Pre-Hearing Conference should not inure to the Petitioners' benefit. It is clear for the reasons discussed in BellSouth's Motion to Dismiss that

¹ The cover letter accompanying the Petition makes this abundantly clear. "Attached is the original and thirteen copies of the above-captioned Petition which asks the Tennessee Regulatory Authority to declare circuit switching an unbundled network element. This Petition is filed pursuant to T.C.A. § 65-5-209(d) which requires the agency to set the matter for hearing within thirty days and to issue a

the statute cited by the Petitioners does not apply to this case. Accordingly, Petitioners should not be entitled to burden the Authority and other parties with a fast track schedule when neither cause nor statutory support warranting such treatment has been established.

In its Motion, the Petitioners appear to concede the possibility that § 65-5-209(d) is inapplicable. In that filing, Petitioners argue for the first time that an expedited schedule should be based not on the statute but rather on "the Authority's recent practice of handling carrier-to-carrier complaints on an expedited basis." No further explanation is given. While BellSouth recognizes that the Authority has indeed attempted to expedite the response times to certain carrier-to-carrier complaints, such expedited schedules have been set on a case-by-case basis with regard to the specific facts of each case. As stated, there is no basis even alleged for expediting this proceeding other than the misguided attempt to shoe horn the Petition into an inapplicable statute.

The schedule proposed by Petitioners is unreasonable in the first instance, because the schedule depends upon the day a ruling is issued on outstanding motions. It is impossible to tell which of the scheduled periods will fall over weekends affecting the number of business days available to comply with the schedule. Moreover, the schedule provides only seven days to respond to discovery requests. This is particularly problematic with respect to this matter in

decision twenty days thereafter." (footnote omitted). See Petitioners' letter of February 25, 2002.

light of the issues surrounding facility-based CLECs discussed in BellSouth's Motion to Dismiss. As referenced in the Motion to Dismiss, BellSouth believes that it is unlikely that facilities-based CLECs would take a similar position to the position being advanced by the Petitioners in this matter. Moreover, if the merits of the Petitioners' claim were addressed, it would be relevant to consider the available switching provided by the facilities-based CLECs. Accordingly, BellSouth anticipates that discovery requests would be made of third parties. Obtaining responses to discovery within seven days from non-parties would be burdensome. Moreover, the seven-day response time followed by the short turnaround time prior to testimony being due provides no time for any form of discovery dispute to be raised and resolved.

BellSouth requests that the Hearing Officer take BellSouth's Motion to Dismiss and the Petitioners' response under advisement. If the Motion is granted, there will be no need for a Pre-Hearing Conference or procedural schedule. If the Motion is denied, then a Pre-Hearing Conference can be scheduled to discuss procedural issues, including a schedule. Given that the Petitioners have conceded that even if applicable, the 30-day period referenced in T.C.A. § 65-5-209(d) could begin to run on the date on which the Hearing Officer rules on the Motion to Dismiss, there is accordingly no emergency or running clock which would necessitate holding a pre-hearing conference under the time line requested by the Petitioners.

For the foregoing reasons, BellSouth respectfully requests that the Motion to Set Pre-Hearing Conference on March 7, 2002, be denied.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

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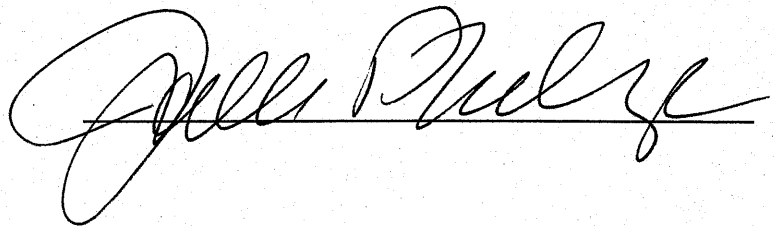
Atlanta, Georgia 30375

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2002, a copy of the foregoing document was served on counsel for known parties, via the method indicated, addressed as follows:

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight
- ☐ Electronic

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A handwritten signature in cursive script, appearing to read "Henry Walker", is written over a horizontal line.